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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/057,479  | 10/19/2001  | Rodney Gordon Webster | 16869S-036900US     | 3559             |
| 20350   | 7590        | 05/31/2005            | EXAMINER            |                  |
| TOWNSEND AND TOWNSEND AND CREW, LLP<br>TWO EMBARCADERO CENTER<br>EIGHTH FLOOR<br>SAN FRANCISCO, CA 94111-3834 |             |                       | PHAM, CHRYSTINE     |                  |
|   |             |                       | ART UNIT            | PAPER NUMBER     |
|   |             |                       | 2192                |                  |

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/057,479             |  | WEBSTER ET AL.      |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Christine Pham         |  | 2192                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*HC*

*PD*

**DETAIL ACTION**

1. This action is responsive to amendment filed on February 18<sup>th</sup> 2005. Claims 1-25 have been canceled. Claims 26-38 are new and presented for examination.

**Response to Arguments**

2. Applicants' argument(s) filed on February 18<sup>th</sup> 2005 have been considered but are moot in view of new grounds of rejection.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless –  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

4. Claims 26-27, 29-30, 32-35, 37, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Donohue (*Donohue*, US 6199204 B1).

**Claim 26**

*Donohue* teaches a method for updating system software for a network apparatus in a network to which are connected a plurality of network apparatuses (see at least *computer programs, updater agents* Abstract), the method comprising:

- o connecting one network apparatus (see at least 10 FIG.1 & associated text) to the network (see at least 100 FIG.1 & associated text) to acquire system information from other network apparatus (see at least 40 FIG.1 & associated text; *updater component, remote machine, three computer systems, a, b, c* col.7:10-30; 40' FIG.3 & associated text), the system information including

system component information (see at least *information for identifying one or more locations within the network, required software resources, software vendor name, search parameter, product identifier, updater component col.3:50-col.4:50; updater components, address information, product identifier col.6:1-25; Product\_ID col.11:25-40*) and software version information (see at least FIG.2 & associated text; *software versions col.5:60-62; updater components, version number, associated software products col.7:45-50; Current\_Installed\_Version col.11:25-40*) about system software installed in the system component (see at least 30 FIG.1 & associated text; *computer programs, computer system, computer network col.3:50-col.4:50*);

- o acquiring system component identification and software version information from at least one system update module (see at least 20 FIG.1 & associated text; *information for identifying one or more locations within the network, required software resources, software vendor name, search parameter, product identifier, updater component col.3:50-col.4:50*);
- o selecting the system update module for installing a different version of the system software (see at least *updater components, preset criteria, software updates, certain updates, updating patches, replacement product versions, update path, instructing the updater components, update policy col.5:1-50*); and
- o updating the system software to the different version at each system component (see at least *computer programs, computer system, computer network, software update col.3:50-col.4:50; updater component, triggering updates, installed software products col.5:1-50; updated versions, new versions, current version, future versions, latest version col.9:1-35; updater component, required resources, another machine, pre-requisite software, remote machine col.9:45-67; 310 FIG.4 & associated text; Force Growth col.11:25-67*)

#### Claim 27

The rejection of base claim 26 is incorporated. *Donohue* further teaches wherein the different version of the system software comprises a version of the system with a date closest to when the step of

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updating is performed (i.e. current version) (see at least *most up-to-date software* col.4:1-10; *updated versions, new versions, current version, future versions, latest version, highest possible version* col.9:1-50).

#### Claim 29

The rejection of base claim 26 is incorporated. *Donohue* further teaches the system update module also contains information for acquiring a different version of the system software from a system update module coupled to an external network (see at least *Growth\_Path, software product, Internet, Intranet, other network, newer versions* col.12:4-25);

- o the different version of the system software is acquired from the system update module coupled to the external network (see at least *Growth\_Path, software product, Internet, Intranet, other network, newer versions* col.12:4-25).

#### Claim 30

The rejection of base claim 26 is incorporated. *Donohue* further teaches wherein the system software in the system component includes a plurality of software elements, the different version changes only some of the system software elements (see at least *fixing of bugs, software product, errors being corrected, software patches* col.3:50-col.4:50; *update policy, full replacement versions, software products, patches* col.16:1-30), and the system update module includes compatibility information between different versions and the software elements (see at least *updater component, update criteria, possible growth paths, prerequisite software* col.9:1-35; *update synchronization* col.13:55-61; FIG.2 & associated text).

#### Claim 32

The rejection of base claim 26 is incorporated. *Donohue* further teaches the system information in each network apparatus includes a last update date and time when the different version was installed (see at least *Current\_Installed\_Version, Last\_Growth\_Time* col.11:25-67); and

- o if the network includes at least two network apparatuses (see at least *updater components, triggering updates* col.5:1-45; *updater component, remote machine* col.7:10-35) capable of executing the method for updating system software, then the network apparatus having a most recent update date and time is designated as a manager to execute the method of updating system software (see at least *updater component, update criteria, growth policy, latest version, highest possible version, update policy* col.9:20-67; *forcing of updates, update policy* col.13:1-55; *Growth\_Type:patches, latest* col.16:10-30).

### Claim 33

The rejection of base claim 26 is incorporated. *Donohue* further teaches wherein the system update module includes an explanation statement about its contents, and the method further includes:

- o displaying the explanation statement to a user to allow the user to determine whether an update is to be performed by using the system update module (see at least *users, updates, descriptions* col.10:10-15).

### Claim 34

*Donohue* teaches a network apparatus in a network system in which a network connects a plurality of the network apparatuses (see at least 100 FIG.1 & associated text) wherein:

- o system information is acquired from each of the network apparatuses (see at least 40 FIG.1 & associated text; *updater component, remote machine, three computer systems, a, b, c* col.7:10-30; 40' FIG.3 & associated text) connected to the network, the system information including system component identification information (see at least *information for identifying one or more locations within the network, required software resources, software vendor name, search parameter, product identifier, updater component* col.3:50-col.4:50; *updater components, address information, product identifier* col.6:1-25; *Product\_ID* col.11:25-40) and version information of system software installed in each of the network apparatuses (see at least FIG.2 & associated



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text; *software versions* col.5:60-62; *updater components, version number, associated software products* col.7:45-50; *Current\_Installed\_Version* col.11:25-40);

- o system component identification information and version information of system update modules (see at least *updater components, products* col.5:1-50) are acquired from system update modules (see at least 20 FIG.1 & associated text; *information for identifying one or more locations within the network, required software resources, software vendor name, search parameter, product identifier, updater component* col.3:50-col.4:50), the system update modules operating under control of the network apparatuses and being used for updating system software of network apparatuses (see at least 10, 20, 30 FIG.3 & associated text);
- o update data necessary for revising system software of each network apparatus connected to the network is obtained by using system component identification information and version information of the system update modules (see at least 20 FIG.1 & associated text; *information for identifying one or more locations within the network, required software resources, software vendor name, search parameter, product identifier, updater component* col.3:50-col.4:50); and
- o the update data is used to revise the system software installed in at least one of the network apparatuses (see at least *fixing of bugs, software product, errors being corrected, software patches* col.3:50-col.4:50; *update policy, full replacement versions, software products, patches* col.16:1-30).

**Claim 35**

The rejection of base claim 34 is incorporated. *Donohue* further teaches wherein the system software in one of the network apparatuses is updated to a current version using the system update modules (see at least *updater component, update criteria, growth policy, latest version, highest possible version, update policy* col.9:20-67; *forcing of updates, update policy* col.13:1-55; *Growth\_Type:patches, latest* col.16:10-30).

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**Claim 37**

The rejection of base claim 34 is incorporated. *Donohue* further teaches wherein the system update module comprises a removable storage medium (see at least *updater component, storage medium, diskette, CD* col.6:1-10).

**Claim 38**

The rejection of base claim 34 is incorporated. *Donohue* further teaches wherein the system update module includes information for acquiring a newer system update module from an external network, and the system update module on the external network is used to provide the update data for the system software (see at least *updater component, updating itself* col.5:1-50; *updater component, another computer system* col.6:1-25; *Growth\_Path, software product, Internet, Intranet, other network, newer versions* col.12:4-25).

**Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

6. Claims 28 and 36 are rejected under 35 U.S.C 103(a) as being unpatentable over *Donohue* in view of *Mishra et al. (Mishra, US 6389589 B1)*.

**Claim 28**

The rejection of base claim 26 is incorporated. *Donohue* further teaches the system information further includes apparatus function information describing functionality of hardware and software in the system component (see at least *software resources, update, description, features* col.10:10-22).



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*Donohue* does not expressly disclose apparatus function information describing functionality of hardware in the system component; the system update module further includes compatibility information about the hardware and software; and the step of updating system software to the different version includes consideration of the compatibility information.

However, *Mishra* discloses system information further includes apparatus function information describing functionality of software and hardware in the system component (see at least *package container object, machine architecture* col.6:14-col.7:50); a system update module (see at least *class store 70* FIG.3 & associated text) further includes compatibility information about the hardware and software (see at least *class store 70, application packages, Platform specific information, hardware architecture* col.9:10-27); and the step of updating system software to the different version includes consideration of the compatibility information (i.e., reference to the apparatus function information) (see at least see at least *class store manager 80, package, processor, machine, hardware architecture* col.18:30-67; *class store, updates, applications, new versions* col.6:1-13). *Donohue* and *Mishra* are analogous art because they are directed to updating system software. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of *Mishra* into that of *Donohue* for the inclusion of considering compatibility information about the hardware and software when updating the software to a different version. And the motivation for doing so would have been to avoid downloading/installing software updates which may not be supported by the user computer's platform/hardware, thus enhancing the management and deployment of software upgrades across the network (see *Mishra* col.1:15-55; col.2:1-15).

### Claim 36

The rejection of base claim 34 is incorporated. Claim recites limitations which have been addressed in claim 28, therefore, is rejected for the same reasons cited in claim 28.

7. Claim 31 is rejected under 35 U.S.C 103(a) as being unpatentable over *Donohue* in view of Lucas et al. (*Lucas*, US 6865737 B1).

**Claim 31**

The rejection of base claim 26 is incorporated. *Donohue* does not expressly disclose wherein whenever a new network apparatus is connected to the network, the method for updating system software is performed.

However, *Lucas* wherein whenever a new network apparatus is connected to the network (see at least *computer network, computer software, server computer systems, destination server computer* col.1:5-65; *servers 104A-C* FIG.1 & associated text; *1900* FIG.19 & associated text; *server-specific information, servers 104A-C, machine records, machine table 362, new machine, host identifier* col.8:20-67), the method for updating system software is performed (see at least *update service 1206, add version 1218* FIG.12 & associated text; *computer software, updating* col.1:5-60; *services, packages, computer software* col.3:25-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of *Lucas* into that of *Donohue* for the inclusion of updating software in new network apparatus. And the motivation for doing so would have been to facilitate automatic/error-free software installation/upgrade in various network apparatuses without requiring human engineer to access, maintain and customize software for each of the network apparatuses, thus reducing the cost in managing distributed software in a network with large number of apparatuses (see *Lucas* col.1:5-30).

**Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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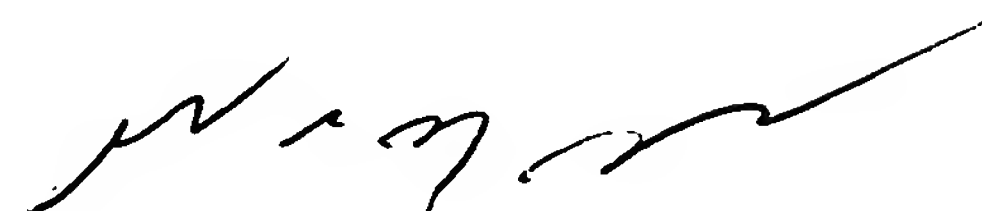
calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chrystine Pham whose telephone number is (571) 272-3702. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP  
May 22, 2005



**WEI Y. ZHEN**  
**PRIMARY EXAMINER**